

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

TERRILL A. BIRD,

Petitioner,

v.

Case No. 2:08-cv-265
HON. R. ALLAN EDGAR

CATHY BAUMAN,

Respondent.

MEMORANDUM AND ORDER

Terrill A. Bird, a Michigan state prisoner in the custody of the Michigan Department of Corrections, brings a petition for writ of habeas corpus under 28 U.S.C. § 2254. He is imprisoned at the Ionia Maximum Correctional Facility in Ionia, Michigan.

Bird challenges the validity of the judgment of conviction entered against him in February 2006 in the Circuit Court of Kent County, Michigan in the case of *People v. Terrill A. Bird*, Criminal Case No. 05-8901FC. After a trial by jury, Bird was found guilty and convicted on two counts of first-degree murder in violation of M.C.L. § 750.316, kidnapping in violation of M.C.L. § 750.349, and unlawful driving away of a motor vehicle in violation of M.C.L. § 750.413. He was sentenced as an habitual offender, third offense, under M.C.L. § 769.11. Bird was sentenced to life imprisonment without the possibility of parole on the two counts of first-degree murder, life imprisonment without the possibility of parole for the kidnapping, and 80 to 100 months imprisonment for the unlawful driving away of a motor vehicle.

Bird took a direct appeal from the judgment of conviction to the Michigan Court of Appeals.

On August 21, 2007, the Michigan Court of Appeals rendered its decision affirming the judgment of conviction and dismissing Bird's direct appeal. *People v. Bird*, 2007 WL 2377343 (Mich. App. Aug. 21, 2007).

In his amended 28 U.S.C. § 2254 habeas petition [Court Doc. No. 63], Bird raises eight claims or issues. On October 12, 2012, Magistrate Judge Timothy P. Greeley submitted his report and recommendation that the entire habeas petition be denied and dismissed with prejudice. [Court Doc. No. 78]. In the report and recommendation, Magistrate Judge Greeley carefully and correctly analyzes all of Bird's claims and the applicable law. It is further recommended that a certificate of appealability be denied under 28 U.S.C. § 2253(c)(2) and *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) as to each and every one of the claims and issues raised by Bird.

Bird has filed objections. After reviewing the record *de novo*, the Court concludes that all of Bird's objections to the report and recommendation [Court Doc. No. 79] are without merit and DENIED. It would serve no useful purpose for the Court to address each of Bird's objections and go through the exercise of reiterating the findings of fact and conclusions which are already set forth in the well reasoned report and recommendation.

The Court ACCEPTS and ADOPTS the Magistrate Judge's report and recommendation [Court Doc. No. 78] pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. LCivR 72.3(b). For the reasons expressed in the report and recommendation, the Court concludes that all of the habeas claims and issues raised by Bird must be denied and dismissed. Accordingly, the entire amended habeas petition brought by Terrill A. Bird under 28 U.S.C. § 2254 [Court Doc. No. 63] is DENIED and DISMISSED WITH PREJUDICE. A separate judgment will be entered.

If petitioner Bird files a notice of appeal to the Sixth Circuit Court of Appeals, it will be treated as an application for a certificate of appealability which shall be DENIED pursuant to 28

U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)(1); and *Slack*, 529 U.S. at 484, for the same reasons expressed in the report and recommendation. Reasonable jurists could not find that this Court's decision to dismiss with prejudice each and every one of Bird's habeas claims is debatable or wrong.

SO ORDERED.

Dated: January 10, 2013.

/s/ R. Allan Edgar

R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE